IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-09-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.25676 of 2007

RPP Construction Pvt Ltd
Represented by its
Managing Director,
MR.P.Arulsundaram
HB-6, Periyar Nagar,
Erode-628 001. .. Petitioner.

Versus

1.Commissioner of Central Excise and Service Tax
Salem, Commissionerate
No.1, Foulks Compound, Salem-1.

2.The Assistant Commissioner of Central Excise,
No.81, Bharathi Nagar, Erode 1 Division,
Erode-638 004.

3.The Superintendent of Central Excise,
Range 81, Bharathi Nagar,
Erode-638 004. .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari and for the reliefs as stated therein.

For petitioner : Mr.Arvind P.Datar for
C.Saravanan

For respondent : Mr.P.Wilson
Additional Government Pleader

O R D E R

Heard Mr.Arvind P.Datar, the learned counsel appearing for the petitioner and Mr.P.Wilson, the learned Assistant Solicitor General, appearing for the respondents.

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2. It is stated that the writ petition has been filed for a writ of Certiorarified Mandamus to quash the letter, dated 08.03.2007, bearing reference O.C.No.151/2007, issued by the 3rd respondent demanding service tax of Rs.1,85,47,826/-, under Section 66 read with Section 65(105)(zzq) of the Finance Act, 1994, on the contracts involving works contract as construction services without issuing proper show cause notice under Section 73 of the Finance Act, 1994, for the period between 10.09.2004 to 28.02.2007 and to direct the respondents to refund the sum of Rs.11,40,833/- already collected as service tax and to pass such further orders.

3. The writ petition has been filed by the petitioner challenging the impugned letter of the third respondent, dated 08.03.2007, raising various grounds as stated therein. The main contention raised on behalf of the petitioner is that the respondents have no authority of law to demand service tax by way of a demand letter. The impugned letter, dated 08.03.2007, has been issued by the third respondent without the petitioner having been given an opportunity of representing its case as there was no show cause notice or proceedings initiated by the respondent so far. However, the respondents have insisted that the petitioner ought to pay the service tax on construction activity involving works contract.

4. In the counter affidavit filed on behalf of the respondents, the contentions raised on behalf of the petitioner have been denied. It has been stated by Mr.P.Wilson, the learned Assistant Solicitor General, appearing for the respondents that the third respondent had advised the petitioner by the impugned letter, dated 08.03.2007, to remit the service tax to the government account. The said letter is only advisory in nature and not a demand letter as contended by the petitioner. The said letter has been issued only to appraise the petitioner with regard to its service tax liability and it is not a demand order. Therefore, there is no cause of action for the petitioner to file the present writ petition.

5. Mr.P.Wilson, the learned Assistant Solicitor General, appearing for the respondents had also submitted that the respondents would strictly follow the due procedure established by law, if and when they seek to demand payment of service tax from the petitioner. Since the impugned letter issued by the third respondent, dated 08.03.2007, is only advisory in nature, the present writ petition filed by the petitioner is premature in nature and liable to be dismissed in limine without going into the merits of the case.

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6. On such submissions being made by the learned counsels appearing on behalf of the parties concerned, this Court is of the considered view that the present writ petition filed on behalf of the petitioner is pre-mature in nature and therefore, it cannot be held as maintainable at this stage. However, it would be open to the petitioner to challenge the appropriate proceedings of the respondents, in accordance with law, as and when they are issued.

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With the above observations, this writ petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1.Commissioner of Central Excise and Service Tax
Salem, Commissionerate
No.1, Foulks Compound, Salem-1.

2.The Assistant Commissioner of Central Excise,
No.81, Bharathi Nagar, Erode 1 Division,
Erode-638 004.

3.The Superintendent of Central Excise,
Range 81, Bharathi Nagar,
Erode-638 004.

1 cc To Mr.C.Saravanan, Advocate, SR.58134.
1 cc To Mr.P.Wilson, Advocate, SR.58154.

Writ Petition No.25676 of 2007

JP(CO)
RVL 06.11.2007

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